

**REMARKS**

**I. STATUS OF THE CLAIMS**

Claims 1, 2, 6 and 8 are currently pending.

**II. REJECTION OF CLAIM 6 UNDER 35 U.S.C. § 101**

Claim 6 is amended herein to recite a computer readable medium storing a computer-executable program. In view of the foregoing, it is respectfully submitted that the rejection is overcome.

**III. REJECTION OF CLAIMS 1, 2, 6 AND 8 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER REYNOLDS (U.S. PATENT NO. 5,742,499)**

Claim 1 recites measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions comprising a version of an operating system corresponding to each of the communication devices. Claims 2 and 6 recite somewhat similar features. As the Office Action states, "Reynolds, however, does not disclose a communications method that comprises a version of the operating system." See page 3, last two lines, of the Office Action. The Examiner then asserted that "[i]t is also known that to perform compatibility checking, the transmitter and the receivers exchange their software numbers." See page 4, lines 10 and 11, of the Office Action. The Applicant respectfully submits that the obviousness rejection is improper.

On page 6, lines 11-15, of the Office Action, the Examiner states that:

[I]t would have been obvious to one of ordinary skill in the art at the time the invention was made to use a version of an operating system of the communication devices (nodes) the broadcasting system of Reynolds in order to increase transmission speed by checking compatibility between the transmitter and the receivers.

It is respectfully submitted that the Examiner has not provided sufficient evidence in support of his conclusion that it would have been obvious to modify Reynolds to get the features of claim 1. If it were indeed obvious to modify Reynolds in order to yield "a communications method that comprises a version of the operating system" as the Examiner suggests, there would likely be objective evidence such as a prior art reference of someone making such a modification. Further, the Examiner has not provided any such evidence or prior art reference that performed compatibility checking at the time of Reynolds' invention.

Reynolds also particularly and explicitly pertains to a parallel processing system having multiple processors, where the parallel processing system is controlled by operating software. See column 1, lines 26-38. Reynolds neither discloses that it would be advantageous, nor feasible, to have multiple operating systems in the parallel processing system disclosed therein.

The above comments are specifically directed to claim 1. However, it is respectfully submitted that the comments would be helpful in understanding various differences of various other claims over the cited reference.

In view of the above, it is respectfully submitted that the rejection is overcome.

#### **IV. REJECTION OF CLAIMS 1, 2 AND 6 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER LEDERMAN (U.S. PATENT NO. 5,448,625)**

Claim 1 recites measuring a communication performance between a plurality of communication devices. Claims 2 and 6 recite somewhat similar features. The Office Action states that Lederman discloses “measuring a communication performance between a plurality of communication devices” because “time of call is divided between one mode in which the parties are in communication with each other and different mode in which the communication is interrupted.” See page 5, lines 10 and 13-15, of the Office Action. Lederman fails to disclose this feature.

Lederman discloses a telephone system adapted to disseminate advertisements. See column 2, lines 28-33. The system has two modes – a mode where the parties are in communication with one another and a mode where ad messages are delivered. See column 2, lines 44-60, of Lederman. However, Lederman does not measure *communication performance* between a plurality of devices. In fact, Lederman doesn't measure the performance of **anything**. The system merely switches from one mode to another based on a time interval. See column 7, line 56 through column 8, line 16, of Lederman. Thus, Lederman fails to disclose the above feature as recited, for example, in claim 1.

Claim 1 also recites obtaining a condition-based optimum communication mode. Claims 2 and 6 recite somewhat similar features. In asserting that Lederman discloses this feature, the Office Action states that “the mode may alternate between message intervals whose duration is determined by ad message length and communication intervals whose length is determined by a talking time timer.” See page 5, last three lines, of the Office Action. However, Lederman fails to disclose the above feature as recited, for instance, in claim 1.

Per the above, Lederman discloses a telephone system having a mode where the parties are in communication with one another and a mode where ad messages are delivered. See column 2, lines 44-60, of Lederman. As such, Lederman merely switches between two modes. At no point does Lederman obtain a condition-based optimum communication mode, as recited, for example, in claim 1.

Claim 1 further recites measuring a communication time of each of the communication modes of one of the communication devices under a plurality of communication conditions comprising a version of an operating system corresponding to each of the communication devices. Claims 2 and 6 recite somewhat similar features. As the Office Action states, "Lederman fails to disclose a communications method that comprises a version of the operating system." See page 6, lines 7 and 8, of the Office Action. The Office Action then states that "[i]t is also known that to perform compatibility checking, the transmitter and the receivers exchange their software numbers." See page 6, lines 10 and 11, of the Office Action. The Applicant respectfully submits that the obviousness rejection is improper.

It is respectfully submitted that the Office Action does not provide sufficient evidence in support of his conclusion that it would have been obvious to modify Lederman to get the features of claim 1. The advertising method of Lederman is completely unrelated to the features of claim 1. If it were indeed obvious to modify Lederman in order to yield "a communications method that comprises a version of the operating system" as the Examiner suggests, there would likely be objective evidence such as a prior art reference of someone making such a modification. However, the Examiner has not provided any such evidence or prior art reference that performed compatibility checking at the time of Lederman's invention. Thus, the Applicant respectfully traverses the obviousness rejection.

The above comments are specifically directed to claim 1. However, it is respectfully submitted that the comments would be helpful in understanding various differences of various other claims over the cited reference.

In view of the above, it is respectfully submitted that the rejection is overcome.

## **V. CONCLUSION**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Serial No. 09/501,716

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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Date: 8-13-2007

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